

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DANIEL JAMES MARSHEL,)	
)	
Plaintiff,)	
)	
v.)	Case Number: 1:13-cv-831
)	
ASSET ACCEPTANCE, LLC, a Delaware Limited)	
Liability Company, and GREENE & COOPER,)	
LLP,)	
)	
Defendants.)	

COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff brings this action against Defendants to enforce his rights under the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”). The Plaintiff is a consumer and the Defendants are debt collectors. While acting as debt collectors, Defendants attempted to collect a consumer debt from Plaintiff. In so doing, Defendants violated the FDCPA. Plaintiff seeks actual and statutory damages from Defendants, along with an appropriate award of costs, litigation expenses, and attorneys’ fees.

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue in this District is proper under 28 U.S.C. § 1391, as Defendants conduct business in this District and the conduct complained of occurred here.

PARTIES

4. Plaintiff Daniel James Marshel is a consumer as defined by 15 U.S.C. § 1692a(3) and is a citizen of the State of Indiana, who resides in the Southern District of Indiana, from whom Defendants attempted to collect a delinquent consumer debt by filing a time-barred collection lawsuit in the Hamilton County Superior Court.

5. Defendant Asset Acceptance, LLC (hereinafter referred to as “Asset”) is a Delaware limited liability company that acts as a debt collector, as defined by § 1692a of the FDCPA, because it regularly uses the mails and/or the telephone to collect, or attempt to collect, delinquent consumer debts. Asset operates a nationwide delinquent debt collection business, and attempts to collect debts from consumers in virtually every state, including consumers in the State of Indiana. In fact, Asset was acting as a debt collector as to the delinquent consumer debt it attempted to collect from Plaintiff.

6. Asset is a bad debt buyer that buys large portfolios of defaulted consumer debts for pennies on the dollar, which it then collects upon via collection letters, telephone calls, credit reporting, lawsuits, and proofs of claims in bankruptcy matters.

7. Asset is authorized to conduct business in Indiana, and maintains a registered agent here, see, record from the Indiana Secretary of State, attached hereto as Exhibit “A”. In fact, Asset conducts business in Indiana.

8. Defendant Greene & Cooper, LLP (hereinafter referred to as “Greene”) is a law firm which, *inter alia*, engages in collecting consumer debts in this state, and has its principal place of business located at 2210 Greene Way, Louisville, KY, 40250.

9. Greene is a law firm that regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is a debt collector as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

10. In April 2006, due to financial difficulties, Mr. Marshel was forced to stop paying some of his unsecured debts, including one he allegedly owed to Beneficial Indiana, Inc. After the Beneficial debt became delinquent, it was allegedly transferred/sold to, or otherwise obtained by Asset during 2007.

11. Although the statute of limitations in Indiana for collecting this delinquent debt, pursuant to Indiana Code § 34-11-2, is six years from the date of last activity, on September 4, 2012, Asset, via counsel, Greene, filed a collection lawsuit in Hamilton County Superior Court under cause number 29D03-1209-CC-9230 seeking the amount of \$10,184.83 plus interest, court costs, and other relief. An attachment to the Complaint admitted that the last payment and activity on the account occurred on June 18, 2006. A copy of the state court complaint and the attachment are attached hereto as Exhibit "B".

12. Accordingly, Mr. Marshel has been forced to defend the time-barred state court action and has incurred legal fees in doing so.

13. All of Defendants' collection actions at issue in this matter occurred within one (1) year of the date of this Complaint.

14. Defendants' collection actions and communications are to be interpreted under the "unsophisticated consumer" standard. See, Gammon v. GC Services, Ltd. Partnership, 27F.3d 1254, 1257 (7th Cir. 1994).

**VIOLATION OF § 1692e(5) OF THE FDCPA –
TAKING AN ACTION THAT COULD NOT BE LEGALLY TAKEN**

15. Plaintiff adopts and realleges Paragraphs 1 – 14.

16. Section 1692e(5) of the FDCPA prohibits debt collectors from taking actions that cannot legally be taken in connection with the collection of a debt. see 15 U.S.C. § 1692e(5).

17. Attempts by debt collectors to collect time-barred debts have been widely held to violate § 1692e of the FDCPA. See, McCollough v. Johnson, Rodenburge & Lauinger, LLC, 637 F.3d 939, 947-48 (9th Cir. 2011). Herkert v. MRC Receivables Corp., 655 F. Supp 2d 870, 875-76 (N.D. Ill 2009); Ramirez v. Palisades Collection LLC, 2008 U.S. Dist. Lexis 48722, 15-16 (N.D. Ill 2008); Kimber v. Federal Financial Corporation, 668 F. Supp. 1480, 1487 (M.D. Al. 1987).

18. By filing a state court action for a debt that clearly time-barred under Indiana Law, Defendants Asset and Greene took actions that they could not legally take and, thus, violated § 1692e(5) of the FDCPA.

19. Defendants' violations of § 1692e of the FDCPA render them liable for actual and statutory damages, costs, and reasonable attorneys' fees. See, 15 U.S.C. § 1692k.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Daniel James Marshel respectfully requests that the Court find that the Defendants violated the FDCPA and enter judgment against Defendants Asset Acceptance, LLC and Greene and Cooper, LLP for actual damages, statutory damages, costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k and all other just and proper relief.

Respectfully submitted,

/s/ Thomas G. Bradburn
Thomas G. Bradburn

DEMAND FOR JURY TRIAL

Plaintiff respectfully requests trial by jury.

Respectfully submitted,

/s/ Thomas G. Bradburn
Thomas G. Bradburn

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